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M E M O R A N D U M

TO: Mayor Schneier and Town Commissioners
CC: Tom Harmer, Town Manager
FROM: Maggie D. Mooney, Esq., Town Attorney
DATE: June 2, 2021
RE: Update – Jewfish Key and Vessel Noise Regulation

At the May 18, 2021 Workshop the Town Commission requested a discussion on the regulation of vessel noise due to a recent surge in resident complaint relating to non-motorized vessel noise. At that time and due to the complexity of issues and meeting agenda deadlines, I requested that the Town Commission consider scheduling the discussion for the June 21, 2021 Workshop. That request was agreed to by the Town Commission. In the interim, residents on the north end of Longboat Key continue to experience issues with non-motorized vessel noise emanating from vessels anchored between the Longboat Key main island and Jewfish Key. Such issues have prompted a request for an update at the June 7, 2021 Regular Town Commission meeting on the status and the anticipated issues being evaluated.

The issues involved in addressing this matter that we anticipate addressing at the June 21, 2021 Town Commission Workshop relate to the following:

- I. Town’s Jurisdiction over vessels anchored in the waters surrounding the island.
 - A. Pre-emptions in Chapter 327, Florida Statutes
 - B. 2016 Florida Attorney General Opinion (“AGO”) that stated the Town does not have jurisdiction to regulate vessels within the “Intercoastal Waterway”.
 - C. Challenges to the assumptions in the AGO.

- Resident research on the federal delineated channel.
 - Recent legislation (passed by the Legislature, but not signed into law yet) references the Intercoastal Waterway as a “channel”.
- D. Approaches to modifying the Town’s prior reliance on the AGO.
- Request AGO clarify/revisit prior opinion based upon new information/law.
 - Disregard AGO interpretation and rely upon research.
 - Seek Declaratory Relief (lawsuit) from 12th Circuit Court on issue.
- II. Town’s Sound Ordinance - Section 130.02, Town Code.
- A. Town Code last modified in 2005.
- B. Subject to First Amendment/Constitutional Requirement
- Objective standards (i.e., decibel) standards.
- C. Enforcement challenges.
- III. Other Options: (SB1086 and SB 1976)
- A. Vessel Exclusion zone creation.
- 500 ft setback from any public vessel launch areas (ie, vessel or kayak launch); or
 - Setback from a designated public bathing beach or swim area.
- B. Boat Anchoring Restricted zones.
- Created by County
 - Prevents anchoring for more than 45 days in a 6 month period.
 - Includes additional enforcement/penalties.
- C. Boating Restricted areas. (Fla. Stat. 327.46)
-Speed related.
- D. Marine Patrol Response to Complaints
- Frequency of complaints
 - Is there compliance when a complaint is received?
 - Additional patrols seem to mitigate negative behavior.
 - Staffing/Equipment issues.
 - Interagency/government cooperation.
- E. Other enforcement means provided for in Florida Statutes.
- Boating safety identification card - \$50 civil fine
 - Operating in excess of speed - \$50 civil fine
 - Carry safety equipment/personal floating devices

- Interference with navigation - \$50 civil fine
- Marine sanitation devices - \$50 civil fine
- DUI/Testing – Driving/actual operation; suspension of license - \$500 civil fine

F. Pursue Legislative fix.

- Determine whether there will be a “glitch bill” in 2022 to specifically address vessel issues that did not make it into SB 1086 or SB 1976.
- Clarify local government authority to regulate non-motorized noise on water.
- Clarify Intercoastal Waterway definition to make it consistent with other references in Chapter 327, Florida Statutes.

G. Revisit the Removal of Sand from the Jewfish Key sand bar area.

H. Other Options.

Additionally, conversations have been ongoing with the Florida Fish and Wildlife Commission (“FWC”) General Counsel’s office regarding the non-motorized vessel noises and the Town’s desire to regulate and reduce such nuisances emanating from the water. Since FWC is the state agency delegated authority to oversee most vessel regulations, it is important to coordinate our discussion, concerns and potential approaches with them. Additionally, we have also been reviewing 2 bills (SB 1086 and SB 1976) that passed during the 2021 Legislative Session relating to anchoring limitations and prohibitions. These newly passed laws appear to offer potentially new authority to exclude vessels anchoring at certain locations on navigable waters. As of the date of this Memorandum, these bills have not become law yet; and unless vetoed by the Governor, these laws will likely have an effective date of July 1, 2021.

The above is intended to be a brief update and outline of the topics we are currently exploring and anticipate discussing at the next Town Commission workshop. The intention is to explore and discuss with the Town Commission one or more means of addressing the ongoing problems presented by nuisance non-motorized vessel noise on the waters surrounding Longboat Key.

If you have any questions regarding this update, please do not hesitate to contact me directly.

End of Agenda Item